

CENTRAL VALLEY FLOOD PROTECTION BOARD ENFORCEMENT
PROCEEDINGS PURSUANT TO TITLE 23

The Central Valley Flood Protection Board (“Board”) has authority pursuant to the Water Code and Title 23 of the California Code of Regulations to enforce standards for the erection, maintenance, and operation of levees, channels, and other flood control works within its jurisdiction, including but not limited to standards for encroachments, construction, vegetation, and erosion control measures.

The Board’s regulations related to enforcement proceedings are located in Title 23, Division 1, Chapter 1, Article 4, sections 20 through 22 of the California Code of Regulations (“CCR”), and can be found at the Board’s website at www.cvpfb.ca.gov by clicking the “Regulations” tab. This document provides a summary of the governing procedures for enforcement proceedings undertaken by the Board pursuant to Title 23.

Governing Procedures

A. Initiation and Notice; Interested Parties

The Executive Officer may initiate an enforcement proceeding pursuant to section 20 of the Board’s regulations by serving a notice by certified mail, return receipt requested, to the landowner or person (referred to as the “respondent”) owning, undertaking or maintaining a work that is in violation of the division or that threatens the successful execution, functioning or operation of an adopted plan of flood control. The notice must state the acts or omissions which the Executive Officer believes to constitute the violation, as well as specify the statutes or regulations the respondent is alleged to have violated.

The notice must be accompanied by an order requiring the respondent to respond within 30 days of receipt of the notice. The notice and order must state that the Board may seek judicial enforcement should the respondent fail to respond in a timely manner and that the Board may abate violations by such actions identified in section 22 of the Board’s regulations. Such actions may include, for example, physical removal of the encroachments at respondent’s cost and expense.

Other interested parties may become parties to an enforcement proceeding by filing a notice to that effect with the Board. The Board shall mail a copy of that notice to the respondent within 10 days of receipt.

Notwithstanding the above notice requirements, if there is work that has not been approved by the Board, the Executive Officer or Chief Engineer may issue an order for compliance with Division 1 of Title 23 of the regulations, including an order to stop work.

B. Hearing Procedures

The respondent shall have the opportunity for a hearing, which must be requested in the respondent's timely response to the notice of enforcement hearing. Failure by the respondent to file such a response within 30 days of receipt of the notice constitutes a waiver of the respondent's right to a hearing.

A full hearing or partial hearing may be held before the entire Board or before a committee of one or more Board members at any place within the state. If the hearing is held before less than the full Board, the Board President shall designate a hearing officer to prepare a record of the evidence and a proposed decision for consideration by the full Board at a subsequent Board meeting. All hearings must be open to the public.

Written notice of the hearing shall be mailed to the respondent and each other party at least 10 days prior to the hearing. Respondents and other parties shall be mailed a copy of any staff report or recommendations on the enforcement proceedings at least 10 days prior to the hearing.

The Administrative Procedure Act's ("APA") Bill of Rights, which sets forth basic requirements of due process, is incorporated into the Board's enforcement hearing procedures (Government Code section 11425.10). The Board has not adopted the formal hearing requirements found in Chapter 5 of the APA (Government Code section 11500 et. seq.). At the hearing, the respondent will be provided the opportunity to present and rebut evidence. The presentation of evidence is subject to the reasonable control and limitation by the Board President, acting chair, or appointed hearing officer, including the length and manner of presentation of evidence. The Board President, acting chair, or appointed hearing officer may also place other controls or limitations as he or she deems appropriate to the specific proceeding.

C. Requests for Documents

The respondent and other parties may request that the Board provide a copy of any document that is relevant to the proceedings and that is not exempt from disclosure under the Public Records Act (Government Code section 6521 et. seq.). The Board may charge a reasonable fee for each copy.

D. Board Decision

After the conclusion of the hearing, the Board shall issue a decision in writing based upon the record, including a statement of the factual and legal basis of the decision. If a hearing officer is appointed, the hearing officer shall prepare a proposed decision within 30 days after the conclusion of the hearing and the Board shall adopt its final decision based upon the record of evidence at the next regularly scheduled Board meeting after issuance of the proposed decision.

The Board decision shall by order specify what action must be taken by the respondent, at respondent's cost, and the time within which such action must be taken. The required action may include, but is not limited to:

- 1) Removal of the work;
- 2) Alteration of the work;
- 3) Performance of additional work;
- 4) Implementation of specified mitigation for effects on the environment;
- 5) Compliance with additional reasonable conditions, including but not limited to requiring the respondent to permit inspection by the Board, its officers, staff, or authorized representatives of the Department of Water Resources during and after construction and requiring the respondent to file with the Board reports and data, including a description of all work done. The Board may request in writing at any time any reports or data, even if not expressly stated in a condition to the decision;
- 6) Filing an application for a permit;
- 7) Revocation of the permit.

The Board decision may also give notice that if the respondent does not comply with the decision within a reasonable time, the Board may take actions to abate violations or threats to the adopted plan of flood control, such as physical removal, and recover its costs from the respondent. .

E. Reconsideration

No later than 30 days after adoption by the Board of a decision or order, any interested person affected by the decision or order may petition the Board for reconsideration for any of the reasons stated and in the manner stated in section 23 of the Board's regulations.